

REMARKS

For the convenience of the Examiner set forth below is a recapitulation of the current status of the Claims in the present Application.

CLAIMS	STATUS	DEPENDENCY
1	Canceled	—
2	Canceled	—
3	Previously presented	Independent

Comments of Examiner Stephen A. VU have been reviewed carefully along with pertinent sections of the Patent Act, Patent Rules, the Manual of Patent Examining Procedure, legal treatises and relevant decisional law. In accordance with Examiner VU's requirements, allowance of the Application, as amended, is solicited earnestly.

In the Office Action dated May 18, 2004 the Examiner has stated Claim 2 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

In the Amendment dated August 4, 2004 Claim 2 was rewritten and the subject matter of Claim 2 was presented as new Claim 3. No new matter was added. New Claim 3 is believed to be patentable.

It is believed that both the Office Action dated May 18, 2004 and the Amendment dated August 4, 2004 were correct and appropriate and that Claim 3 is in condition for allowance.

In the Office Action dated October 28, 2004 the Examiner has now stated:

Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by *Arehart et al* (#6,230,455).

Arehart et al show a backrest comprising an endless main frame (12) (see Appendix A-Figure 4) including a groove defined in a side and extending along an entire length, the groove being delimited by a bottom wall and an inner peripheral wall having an endless end face, a mesh (64) fixed to the endless face of the inner peripheral wall delimiting the groove, a decorative frame (52) mounted to the side of the endless main frame and covering the groove and the endless end face of the main frame, and a covering member (62) covering the decorative frame wherein the bottom wall delimiting the groove has a plurality of fixing holes defined. The decorative frame has a plurality of holes with a plurality of fasteners (54) respectively extending through the holes of the decorative frame and the fixing holes of the bottom wall delimiting the groove.

Reconsideration of the Examiner's rejection of Claim 3 is requested on the following basis:

The application of the *Arehart et al.* patent is not considered to be appropriate.

Examination of the *Arehart et al.* reference reveals the following differences between the *Arehart* device, the apparatus of the following present invention and the statements of the Examiner.

1. The *Arehart et al.* patent covers a high impact flanged window screen which is adapted to fit flush on an exterior wall of a building over a window (Col. 1, Lines 39-41).

There is neither a structural nor a functional relationship between the window screen of *Arehart et al.* and the backrest of the present invention.

2. *Arehart et al.* teaches a frame which has been designed to be attached to a building along the entire periphery of the frame. The frame of *Arehart et al.* has not been designed as a backrest and can not be used as a backrest.

3. One of the basic functions of the present invention is to provide a backrest in which the mesh provides support for the back of a user. In the *Arehart et al.* frame the members 14, 52, 57 and 62 project outwardly from the plane of the mesh 64. This construction makes it impossible for the frame of *Arehart et al.* to be used as a backrest because the user's back would make contact only with the components 14, 52 and 62 and not with the mesh 64. This problem exists no matter which surface of the mesh 64 faces

the user. There is thus no way that the frame of *Arehart et al.* can even remotely function as a backrest.

4. The present invention in contrast to *Arehart et al.* receives the mesh in a groove and the present invention provides the user with a surface which is free of elements which project outwardly relative to the plane of the mesh. Claim 3 clearly specifies in part:

an endless main frame including a groove defined in a side thereof and extending along an entire length thereof, the groove being delimited by a bottom wall and an inner peripheral wall having an endless end face;

a mesh fixed to the endless end face of the inner peripheral wall delimiting the groove.

5. *Arehart et al.* does not teach or suggest the use of a groove to receive and fix the mesh nor does *Arehart et al.* teach or suggest any structure which is comparable to the structure of the present invention.

6. The Examiner has attempted to apply *Arehart et al.* by indicating certain reference numerals of *Arehart et al.* as being comparable to elements of the present invention as claimed in Claim 3. Specifically with regard to element 52 of *Arehart et al.* the

Examiner has indicated:

" . . . a decorative frame (52) [Numeral added by Examiner] mounted to the side of the endless main frame and covering the groove. . . "

Examination of the *Arehart et al.* patent reveals that element 52 of *Arehart et al.* does not cover a groove of any kind. Element 52 of *Arehart et al.* covers a flat surface. The structure of *Arehart et al.* is thus not comparable to the structure of the present invention.

For the above reasons the application of the *Arehart et al.* reference is not considered to be appropriate. Reconsideration of the rejection of Claim 3 and reinstatement of the Examiner's previous finding of allowability is respectfully requested.

The status of the Claims is as follows:

Claims 1-2 have been canceled.

In view of the foregoing amendments, submissions and explanations, it is believed that New Claim 3 is in condition of allowance. An early Notice of Allowance on the Application will be appreciated.

Courtesy, cooperation and skill of Examiner Stephen A. VU are appreciated and acknowledged.

Respectfully,

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